

Living Rivers Council

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Re: Comments to CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION, TENTATIVE ORDER NO. 2012-XXXX, CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM VINEYARD PROPERTIES IN THE NAPA RIVER AND SONOMA CREEK WATERSHEDS

Comment #1. Notes are in bold underline:

Terms

- 1) For purposes of this Order (Order or Conditional Waiver):
 - a) A landowner and/or operator of a **Vineyard Property** in the Napa River or Sonoma Creek watersheds who meets the Eligibility Criteria in Section A is hereinafter referred to as a **Landowner/Operator**.
 - b) Terms shown as both capitalized and **bold** text are defined in Section D(11).

Background

- 2) The Napa River and Sonoma Creek watersheds contain an estimated 131,500 acres of **Vineyard Properties** and more than 59,000 acres of planted vineyards from which there may be discharges that affect water quality.
- 3) The State Water Resources Control Board (State Water Board) and regional water quality control boards are the principal state agencies with primary responsibility for the coordination and control of water quality pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne Act, codified in Water Code Division 7). The Legislature, in the Porter-Cologne Act, found and declared that the activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made on it (Water Code § 13000).

Comment #2. The Water Board should include anti-degradation language here to comply for State policy and laws.

- 4) Napa River, Sonoma Creek, and their major tributaries that enter San Pablo Bay provide critical habitat for several federally listed rare, threatened, and endangered species including steelhead trout and Chinook salmon.

Comment #3. Add: Coho salmon

- 5) The Napa River, Sonoma Creek, and their tributaries are impaired by pathogens, nutrients, sediment, settleable materials, and population and community ecology and are

on the State's Clean Water Act Section 303(d) list of impaired water bodies.

6) Excess sediment impacts Napa River and Sonoma Creek beneficial uses including recreation, cold freshwater habitat, fish spawning, and preservation of rare and endangered species. Fine sediment particle loads are substantially elevated in both watersheds degrading aquatic habitat.

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Total Maximum Daily Loads (TMDLs) and Associated Implementation Plans:

7) The Water Board adopted Total Maximum Daily Loads (TMDLs) for sediment in the Sonoma Creek watershed on September 8, 2010, and for the Napa River watershed on September 9, 2009. U.S. EPA subsequently approved these TMDLs on December 10, 2008, and on January 21, 2011, respectively.

8) The sediment TMDLs address water quality objectives for sediment, settleable materials, and population and community ecology that have been impaired due to elevated concentrations of fine sediment in the bed of the Napa River, Sonoma Creek, and their tributaries. The Water Board found that greater than half of all sediment delivered to streams in these watersheds comes from roads and road drainage systems, stream bed and bank erosion, vineyard soil erosion, and intensive historical grazing. Sediment loads within the watersheds are greatly influenced by and vary with terrain, geologic rock type(s), and land use.

9) The TMDLs contain implementation plans that provide a framework for actions needed to achieve water quality objectives for sediment, settleable material and population and community ecology. These actions translate into an approximate 50% reduction in human-caused sediment inputs from the significant sediment source categories identified in the TMDLs.

Comment #4. Add: All implementation actions must achieve anti-degradation . (the Water Board has not described anti-degradation nor included this in the CW program)

Waiver of Reports of Waste Discharge and Waste Discharge Requirements

10) Water Code section 13260 requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, to file with the Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board, unless the Water Board waives such requirement under Water Code section 13269.

11) Water Code section 13263 authorizes the Water Board to prescribe waste discharge requirements (WDRs) for any proposed discharge, existing discharge, or material change to an existing discharge. The WDRs must implement relevant water quality control plans and take into consideration, among other things, the beneficial uses of water to be protected, the water quality objectives reasonably required for that purpose, and the need to prevent nuisance.

Comment #5. Add: Anti-degradation language

12) CWC section 13269 authorizes the Water Board to waive the requirement to file ROWDs and to obtain WDRs for a specific discharge or type of discharge if the Water Board determines, after a hearing, that the waiver is consistent with the applicable water quality control plan and is in the public interest. A waiver is conditional and may be terminated at any time by the Water Board. The Water Board must require compliance with the conditions pursuant to which a waiver is granted. The conditions must include monitoring, unless the discharge does not pose a significant threat to water quality. The waiver may not exceed five years but may be renewed by the Water Board.

13) As authorized by Water Code section 13269, this Order conditionally waives the requirement to file a ROWD and to obtain WDRs pursuant to Water Code sections 13260 and 13263 for discharges of waste from a Vineyard Property that:

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a) Contains a **Vineyard Facility** with a **Slope** less than 5 percent located on one or more parcels totaling 40 acres or more, where 5 or more acres are a planted vineyard; or

Comment #6. Add: coverage for under 40 acres < 5% slopes

Rationale: the WB has not provided scientific information/evidence in the Mitigated Negative Declaration (MND) that omitting coverage will still achieve the WB's target of reducing sediment by 50%. The WB should conduct an EIR because there is a fair argument that these category of vineyard can cause significant environmental impacts.

b) Contains a **Vineyard Facility** with a **Slope** of 5 percent or greater located on one or more parcels totaling 20 acres or more, where 5 or more acres are a planted vineyard; or

Comment #7. Add: coverage for under 20 acres with slopes

Rationale: the WB has not provided scientific information/evidence in the MND that omitting coverage will still achieve the WB's target of reducing sediment by 50%. There is a fair argument that these category of vineyards will cause a significant environment impact. The WB should do an EIR.

c) Is identified by Water Board staff as discharging or proposing to discharge waste that could affect water quality and the Water Board staff finds that regulation of such vineyard through this Conditional Waiver will result in compliance with applicable water quality standards, such that regulation through individual or general WDRs is not necessary.

The waiver for the above vineyards is conditional upon meeting the requirements of this Order.

14) The Water Board finds that waiving ROWDs and WDRs for **Vineyard Properties** subject to this Order is consistent with the San Francisco Bay Basin Water Quality Control Plan (Basin Plan), the State Water Board's 2004 Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy), and antidegradation requirements.

15) The Basin Plan is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives (WQOs) for waters

of the state. It also includes implementation programs to achieve WQOs. The Basin Plan was duly adopted by the Water Board and approved by the State Water Board, the Office of Administrative Law, and USEPA.

16) The Basin Plan designates the following beneficial uses for the Napa River, Sonoma Creek and San Pablo Bay:

The Basin Plan designates the following beneficial uses Napa River,

Sonoma Creek and San Pablo Bay:

Beneficial Use

San Pablo Bay Napa River Sonoma Creek

Agricultural Supply (AGR) X

Cold Freshwater Habitat (COLD) X X

Ocean, Commercial, and Sport Fishing (COMM) X

Estuarine Habitat (EST) X

Industrial Service Supply (IND) X

Fish Migration (MIGR) X X X

Municipal and Domestic Supply (MUN) X

Navigation (NAV) X X

Preservation of Rare and Endangered Species (RARE) X X X

Water Contact Recreation (REC-1) X X X

Non-contact Recreation (REC-2) X X X

Shellfish Harvesting (SHELL) X

Fish Spawning (SPWN) X X X

Warm Freshwater Habitat (WARM) X X

Wildlife Habitat (WILD) X X X

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17) Excess sediment impacts Napa River and Sonoma Creek watershed beneficial uses including recreation, fishing, cold freshwater habitat, fish spawning, and preservation of rare and endangered species. Fine sediment particle loads are substantially elevated in both watersheds, degrading aquatic habitat.

18) In order to protect beneficial uses, this Order includes requirements to implement the Basin Plan and meet water quality objectives for toxicity, bio-stimulatory substances, sediment, settleable materials, population and community ecology, in the Napa River and Sonoma Creek sediment TMDLs.

19) Vineyard sources of toxicity or bio-stimulatory substances may include, but not be limited to, pesticides, herbicides, fungicides, compost, and fertilizers applied either directly to the vine, soil or to the roots through irrigation. Vineyard land use practices, including the storage, mixing and application of agricultural chemicals (e.g., herbicides, pesticides, fungicides, and fertilizers to control weeds, pests, vectors, etc.) can result in the release and transport of these substances to surface waters from stormwater runoff and to ground water. This Order, therefore, requires management practices to minimize delivery of agricultural chemicals to surface water and groundwater so that such discharges do not cause or contribute to the exceedance of Basin Plan water quality objectives for toxicity, bio-stimulatory substances, and population and community ecology. Vineyards also discharge excess sediment and therefore require management practices to limit such discharges and meet water quality objectives for sediment, settleable materials and population and community ecology.

20) This Order is consistent with and implements the Napa River and Sonoma Creek sediment TMDLs, which call for vineyards to be regulated through WDRs or waivers of WDRs. The TMDLs were developed to attain water quality objectives for sediment, settleable materials, and population and community ecology and are not self-implementing. This Order implements the TMDLs' performance standards to control excessive rates of sediment delivery from vineyard surface erosion by requiring erosion control practices to reduce sediment delivery to receiving waters. This Order implements

the TMDLs' performance standards for road-related sediment delivery to channels (less than 500 cubic yards per mile of road over the sediment TMDLs implementation periods). **Vineyard Properties** subject to the Order are required, over time, to reduce the length of **Roads** that drain directly to receiving waters to 25 percent or less. Reducing the length of these directly draining roads in half will meet the sediment TMDL numeric targets for **Roads** that are located on **Vineyard Properties**. This Order also implements the TMDLs' performance standards to accelerate natural recovery and prevent human caused increases in sediment delivery from unstable areas. This Order requires management practices to prevent further sediment delivery from unstable areas to receiving waters, reduce peak stormwater flows, and to prevent and mitigate erosion at **Points of Discharge**

Comment #8. Add: To prevent stream incision and bed and bank erosion. This order lacks the full description of damage that concentrated and sheetflow runoff causes to downstream resources. This order should distinguish between on site erosion and off site erosion.

. Finally, this Order also implements the TMDLs' performance standards to effectively attenuate significant increases in storm runoff by requiring implementation of management practices to prevent excessive rates of runoff and soil loss from **Vineyard Facilities** and **Roads**. **New Vineyards** must demonstrate that runoff (including peak flows) and soil loss do not increase as a result of vineyard development.

21) The NPS Policy requires regulation of non-point source discharges using the Water Board's administrative permitting authorities, including WDRs, waiver of WDRs, Basin Plan Prohibitions, or some combination of these. This Order meets the NPS Policy Tentative Order Page 5 of 26

because it regulates non-point source discharges that previously were not regulated via a waiver of WDRs.

22) The Water Board finds that this Order is in the public interest because it:

- a) Includes conditions that are intended to reduce and prevent pollution and nuisance and protect beneficial uses of the waters of the State.
- b) Will result in the rapid implementation of a geographically extensive and effective program of regulation of non-point source discharges from **Vineyard Facilities** in the Napa River and Sonoma Creek watersheds, which discharges were previously unregulated.
- c) Efficiently regulates the discharge of nutrients and pesticides, wastes that could affect water quality, through the control of sediment discharges.
- d) Provides flexibility by allowing a **Landowner/Operator** to select management practices to comply with the waiver standards that are best suited to their vineyard operation and on-site natural resources.
- e) Provides a more efficient and timely mechanism of complying with water quality objectives than individual regulation through WDRs.
- f) Provides for an efficient and effective use of limited Water Board resources while protecting beneficial uses.
- g) Allows the Water Board to focus its limited resources to conduct field oversight, public outreach, and, when necessary, enforcement. It also allows the Water Board to

focus on vineyard discharges with higher threats to water quality and to regulate them through individual or general WDRs.

23) State Water Board Resolution 68-16, Statement of Policy with Respect to Maintenance of High Quality Waters in California, finds “whenever the existing quality of the water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with the maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

Comment #9. Add: Anti-degradation language

24) The baseline water quality, which is the best water quality achieved since 1968, for the Napa River and Sonoma Creek for bio-stimulatory substances (nutrients) is equal to or less than the applicable water quality objectives, such that, generally speaking, they are not high quality waters. Sonoma Creek and Napa River have historically suffered from nutrient enrichment, specifically eutrophication, excess algae and low dissolved oxygen; however, there may be segments where water quality has been better than water quality objectives and must be maintained. The baseline water quality for these waters as it relates to toxicity is not well documented.

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25) The baseline water quality for Sonoma Creek and the Napa River for sediment, settleable materials, and population and community ecology is equal to or less than the applicable water quality standards, such that, generally speaking, they are not high quality waters. Both the Napa River and Sonoma Creek have historically been impaired by siltation and degraded fish spawning and rearing habitat due to elevated sediment levels, starting in the first half of the 20th century. There has been some improvement in recent years due to large scale river restoration projects; however, both rivers remain impaired. Sediment inputs and its effects on beneficial uses inherently vary on seasonal, annual and longer timeframes and are influenced by, and vary with, terrain, geology (soil types), and land use. Sub-regions within both rivers could therefore contain segments that exceeded standards for sediment, settleable materials, and population and community ecology, such that they are high quality waters, even though when viewed on a larger scale, Napa River and Sonoma Creek has not met and does not currently meet water quality standards.

26) This Order requires management practices to be implemented on **Vineyard Properties** so as to reduce existing discharges of sediment (sediment-bound nutrients and toxic pesticides will be similarly reduced) and storm runoff to meet the sediment TMDLs’ allocations, which are based on the allowable sediment loadings these water bodies can receive and still meet water quality standards. This Order will not lower the baseline water quality; in fact, it will improve it. However, to the extent that baseline

segments of the Napa River and Sonoma Creek are, or have been, high quality waters for the parameters discussed above, allowing discharges under this Order could arguably lower such high quality waters.

Comment #10. Delete the following language. Such lowering is consistent with the maximum benefit to the people in that it allows an important, world-famous regional economic activity to continue. The discharges will not affect present and anticipated beneficial uses and will not result in water quality less than prescribed in policies because the discharges will be controlled and regulated so that sediment, nutrient, and toxic pesticide inputs are reduced so that water quality standards can be met and present and future beneficial uses are protected, consistent with the TMDLs.

Rationale: this is an inappropriate argument for allowing degradation of the people's water. Water quality sacrificed for profiteering violates the Water Code and CEQA and suggest political influences within the WB and speaks against future generations right to clean flowing water.

Finally, this Order will result in the best practicable treatment or control (BPT) of discharges to prevent pollution or nuisance and the maintenance of the highest water quality consistent with the maximum benefit to the people of the State. The management practices required under the Order, examples of which are included in Attachment E (Example Agricultural Management Practices and Technical Assistance References), are BPT because they reflect the state-of-the-art methods for growing grapes that integrate soil and site management practices for pest management and weed control, nutrient management, pesticide storage, handling and modern spray techniques, vineyard soil and runoff control, and water conservation. The methods have proven to be effective in vineyards that have already implemented them.

Scope and Requirements of Waiver

27) This Order regulates discharges of waste from **Vineyard Properties** meeting the eligibility criteria of this Order, including **Roads on Vineyard Properties**.

28) The eligibility criteria of this Order was developed with input from the Technical Advisory Committee and it captures an estimated 85 percent of vineyard parcels and cultivated acres in the Napa River and Sonoma Creek watersheds and takes into consideration parcel size, vineyard size, slope, geology, and soil erosion potential. A 40 acre parcel size was presented in the sediment TMDLs as a possible minimum parcel size Tentative Order Page 7 of 26

for regulating vineyards and is included in this Order as the threshold for vineyards on flat land. For vineyards not on flat land (greater than 5 percent **Slope**), the parcel size threshold is reduced to 20 acres to capture additional vineyards that may affect water quality. Small **Vineyard Facilities** (less than 5 acres) generally pose less risk to water quality due to the limited size of the operation and amount of soil exposed to cultivation.

Similarly, **Vineyard Facilities** on relatively flat land (**Slopes** of less than 5 percent) that contain adequate **Stream Setbacks** generally do not adversely affect water quality through erosive stormwater forces and provide the added water quality benefit by filtering runoff before it enters receiving waters.

29) This Order excludes from coverage **New Vineyards** and **Vineyard Replants** of one acre or greater with vineyards planted on **Slopes** of 30 percent or greater and have soils with high erosion hazard ratings. Discharges from such areas are more appropriately regulated through WDRs due to their higher water quality threats. It also excludes from coverage construction activities on undisturbed land that contain sensitive species.

30) **Landowners/Operators** must prepare Farm Water Quality Plans and implement, and where appropriate, update or improve, management practices to effectively control discharges to meet water quality objectives and achieve compliance with this Order. The specific management practices cannot be dictated by the Water Board because Water Code section 13360 prohibits the Water Board from specifying the manner of compliance with a Water Board order.

31) Farm Water Quality Plans are working tools that farmers use to select, plan, and schedule implementation of management practices. The farm plan is a dynamic document that changes in response to changing onsite conditions and needs and is most appropriately kept and managed by the **Landowner/Operator** onsite. The Water Board finds it is not beneficial to water quality to lock **Landowners/Operators** to management practices that may prove to be ineffective by having fixed farms plans that must be submitted to the Water Board's office on an annual basis.

Comment #11. Delete: Furthermore, some farm plans may contain broader issues of sustainability that are outside of the Water Board's purview, including energy use, labor practices, marketing, and other personal and proprietary information.

Rationale: It is not the WB's job to suggest that such issues could be included in a Water Quality Farm Plan (FP). Nor is it appropriate for the WB to use this excuse to make an argument that the FP could be kept secret because of these issues that might be included in the FP. LRC strongly objects to FP being 'secret' away from the public eye for these reasons: a.) FP are the implementation plans for achieving TMDL's target reductions of pollutants to the waters of the state that are damaging public trust resources such as, fishing, swimming and recreation. b.) for the WB to create a procedure to keep FP's secret is wrong. The polluters should not be keeping TMDL implementation plans 'secret'.

Change to:

ADD: c.) allowing these plans to be public assists the WB in achieving water quality objectives, enforcement actions and protecting public trust resources. Transparency is the WB's and the public's friend in a partnership of cooperation and recovery of the public trust resources for future generations. The WB can not possibly do the job of TMDL's unless the entire process is transparent. d.) one bad FB can devastate an entire watershed putting sediment into a stream for decades. It is best to air on the side of caution and keep the public eye ever present. e.) Transparency

raises the vigilance and standards of compliance of all other property owners who want to be good stewards of the land. f.) Transparent FB is cost effective and promotes a successful TMDL program.

32) Development of new vineyards presents a greater risk for sediment production and changes to storm runoff than existing and replanted vineyards because they typically involve the conversion of open space with grassland or forest ground cover to cultivated ground cover. **New Vineyard** development may reduce the amount of vegetative cover, create bare soil, concentrate flow, or increase the timing and rate of runoff

Comment #12. Add: on and off site

Therefore, **New Vineyards** not excluded from coverage under this Order must be designed so that they do not result in excessive soil loss or increase in peak flows over pre-development conditions.

33) **Landowners/Operators** periodically replant grape vines or cultivated areas (vineyard blocks). Replanting provides an opportunity to modify the vineyard layout, row direction, and drainage system to reduce soil erosion and control storm runoff.

Vineyard Replants

must comply with the Water Quality Requirements of this Order, which may necessitate modifying vineyard layouts, row directions and drainage systems.

34) The Water Board retains the right to terminate coverage under this Order for a **Landowner/Operator** who fails to comply with its requirements and regulate through individual or general WDRs.

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35) This Order does not apply to discharges of waste that are regulated under another waiver of WDRs, individual WDRs or general WDR, or National Pollutant Discharge Elimination System (NPDES) permit, such as winery waste discharge from a winery facility located on the **Vineyard Property**.

Monitoring

36) Water Code section 13269 requires that waivers of WDRs include the performance of individual, group or watershed-based monitoring unless the Water Board determines that the discharges do not pose a significant threat to water quality. Monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the Water Board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results must be made available to the public.

37) Three general types of monitoring are specified in the Napa River and Sonoma Creek sediment TMDLs to assess progress towards achievement of numeric targets and load allocations for sediment:

a) Implementation monitoring to document that required sediment control and habitat enhancement actions are implemented.

b) Upslope effectiveness monitoring to evaluate effectiveness of sediment control actions in reducing rates of sediment delivery to channels.

c) In-channel effectiveness monitoring to evaluate channel response to management actions and natural processes and to evaluate progress towards achieving water quality targets.

38) This Order requires management practices implementation effectiveness monitoring (Finding 37(a)) by **Landowners/Operators**. The purpose of management practices implementation effectiveness monitoring is to document that sediment control actions specified in the Order actually occur, perform as expected, and are properly maintained.

39) The Water Board will conduct upslope effectiveness monitoring (Finding 37(b)) to evaluate sediment delivery (sediment budget) to channels from land use activities and natural processes. In-channel effectiveness monitoring (Finding 36(c)) will be conducted by local governments with scientific expertise and the ability to work with private property owners (to gain permission for site access), as needed to develop a representative sample of stream and habitat conditions, in relation to sediment supply and transport in the watersheds. In addition, the Water Board will conduct in-channel effectiveness monitoring as part of the Surface Water Ambient Monitoring Program.

40) Other significant ongoing assessment and monitoring efforts to track progress made toward attainment of water quality objectives for sediment, settleable matter, and population and community ecology include:

a) The Napa Resource Conservation District's annual steelhead and salmonid out migration monitoring program which began in 2009. Similarly, the Napa County Tentative Order Page 9 of 26

Resource Conservation District has conducted annual surveys since 2005 to estimate the size of the fall-run Chinook salmon.

b) Monitoring to describe the performance of stream and riparian habitat enhancement projects being implemented throughout the Rutherford reach of the Napa River.

c) Continuous stream flow monitoring to protect critical habitat and guide water resources management at three locations along the Napa River.

d) The Napa County Resource Conservation District, in partnership with the Water Board, is developing a monitoring program to evaluate attainment of numeric targets for sediment in the Napa River watershed, which constitutes the in-channel effectiveness monitoring called for in the Basin Plan Amendment and described in 37(c). The in-channel effectiveness monitoring program is projected to begin in water year 2014.

Comment # 13. Since the Napa Valley Resource Conservation District is not a government agency, how can they provide the effectiveness monitoring as stated above per #39? What is effectiveness monitoring? Who are the local governments with scientific expertise that the WB states has the ability to work with private property owners as needed to develop a representative sample of stream and habitat conditions, in relation to sediment supply and transport in the watersheds and when and how will the public have access to this monitoring information? Why not add benthic macro invertebrate monitoring (BMI)? State policy recommends BMI

monitoring. BMI monitoring provides accurate water quality information necessary for tracking over time water quality objectives of TMDLs.

e) Development of a TMDL Tracking and Accounting System to identify tools to prioritize Napa River sediment TMDL implementation and to advance water quality improvements.

Comment #14. Since the Resource Conservation District is not a government agency, how can they provide the effectiveness monitoring as stated above per #39? What is effectiveness Monitoring? This is the function of the State Water Board.

f) Turbidity and suspended sediment monitoring at five locations on the mainstem Sonoma Creek.

Comment #15. Add: Napa River

Rationale: Both waterways should be consistently mentioned.

Since the Resource Conservation District is not a government agency, how can they provide the effectiveness monitoring as stated above per #39.

g) Benthic macroinvertebrates monitoring and physical water quality parameters at eleven locations in the Sonoma Creek watershed.

Comment #16. Add: BMI monitoring for the Napa River. Why leave the Napa River out of this order?

h) Streamflow monitoring, stream depth, water temperature and air temperature at several locations in the Sonoma Creek watershed.

i) Smolt monitoring in Sonoma Creek beginning in 2013 in partnership Southern Sonoma RCD and Center for Ecosystem Management and Restoration.

41) The Water Board will evaluate various other types of information as presented above to determine compliance with this Order such as a) treatment or control measures installed, b) field inspections, c) farm plan review, d) watershed or sub-watershed scale receiving water sediment

ADD: Turbidity

trends, and d) related reporting. Implementation monitoring documented through Annual Compliance Forms will be made available to the public at the Water Board's office. An annual summary of Conditional Waiver compliance monitoring, including updates on the watershed based monitoring described in Finding 40(a-i) above, will be posted on the Water Board's website as they become available.

Annual Fees

42) Water Code section 13269 authorizes the Water Board to include as a condition of a conditional waiver the payment of an annual fee established by the State Water Board. California Code of Regulations, Title 23, Division 3, Chapter 9, Article 1, section 2200.3 sets forth the applicable fees. This Order requires each **Landowner/Operator** subject to the Order, or a discharger group on behalf of its participants, to pay an annual fee to the State Water Board in compliance with the fee schedule.

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Third-Party Groups

43) The NPS Policy encourages the Water Boards to “be as creative and efficient as possible in devising approaches to prevent or control nonpoint source pollution.” This includes development of third-party programs, including coalitions of dischargers in cooperation with a third-party representative, organization, or government agency to assist the dischargers in complying with the requirements and assure the Water Board and the public that actions have been taken to reduce nonpoint source pollution.

44) The Water Board supports a variety of third-party groups, such as Resource Conservation Districts, Natural Resource Conservation Service, UC Cooperative Extension, watershed groups, and non-profit groups such as Fish Friendly Farming (FFF), to assist **Landowners/Operators** in filing required forms, preparing Farm Water Quality Plans, implementing non-point source pollutant control projects, and assisting in annual compliance reporting to the Water Board.

Comment # 17. Where does the transparency occur for the public to see who is not in compliance?

45) The Water Board recognizes that many **Landowners/Operators** in the Napa River and Sonoma Creek watersheds have already taken actions to protect water quality. Of the approximately 131,500 acres of productive vineyards in the watersheds, 52,000 acres are enrolled in the FFF program, and 26,500 acres are certified by FFF. Certified vineyards differ from those categorized as enrolled in that certified vineyards are operated under comprehensive farm plans that have a water quality focus, very similar to the Farm Water Quality Plans that are required by this Order. Furthermore, certified vineyards are either in the process of, or have already implemented, management practices to reduce nonpoint source pollutant discharges from vineyards. These management practices are comparable to the actions that will be implemented through **Landowner/Operator** compliance with this Order and have been effective.

Comment # 18. What is the basis of this statement that certified vineyards are compliant with this order? Where is this report or data? Can you post this to the WB website for public review

46) The Water Board acknowledges that **Landowners/Operators** may not be technical experts and technical assistance entities or consultants may be needed to assist **Landowners/Operators** to comply with the terms, conditions, and requirements of this

Order.

47) The Water Board will consider and approve third-party technical assistance groups to assist **Landowners/Operators** to comply with this Order if the third-party group meets the requirements as set forth in the Attachment C hereto. Entities interested in forming a technical assistance third-party group must document their capabilities and request approval for their group from the Water Board's Executive Officer. Each proposed group will be judged individually on its merits, including the group's technical ability to work with regulated entities and experience in developing and implementing nonpoint source pollution control programs.

48) The Water Board will periodically review a third-party group's performance to ensure that adequate Farm Water Quality Plans are being consistently prepared by **Landowners/Operators** subject the Order. The Executive Officer may terminate the approval of a third-party group if the Water Board's requirements for a third-party group are not being met. Tentative Order Page 11 of 26

Public Participation

49) The Water Board convened a Technical Advisory Committee (TAC) consisting of local experts in the areas of sediment, vineyards and vineyard management, storm water runoff issues, hydrology, and stream functions to vet technical and scientific issues and to seek their input on several issues including:

- Peak flow attenuation performance standards.
- Management practice effectiveness monitoring and the various field approaches that Can be used to quantify the effectiveness of management practices.
- Waiver eligibility criteria and discussion of appropriate vineyard size thresholds in determining the significance of water quality threats.

The TAC met on January 6, June 2, and November 30, 2011, and its input helped Water Board staff in shaping key elements of this Order, including waiver conditions, performance standards, and the monitoring requirements.

50) The Water Board convened a series (June 10 and December 19, 2011, and on March 1, May 15, and August 21, 2012) of Stakeholder Advisory Group meetings to solicit input on this Order. The Stakeholder Advisory Group was comprised of representatives from Napa and Sonoma counties, Sonoma County Grape Growers, Napa County Vintners, Sonoma and Napa County Farm Bureau, the Resource Conservation Districts, UC Cooperative Extension, other agencies, and environmental groups. The Stakeholder Advisory Group provided valuable input on the terms and conditions of this Order, the requirements for a Third Party Group (Attachment C), the required elements of a Farm Water Quality Plan (Attachment D), and example lists of management practices (Attachment E).

51) Water Board staff met on several occasions with parties interested in developing third party technical assistance groups, as well as individuals concerned with how compliance with the Order could affect their current operations, or potentially limit future efforts to expand or replant their vineyards. These meetings ranged in scope from one-on-one meetings and small field trips, to expanded meetings that involved Water Board staff presentations at the:

- UC Cooperative Extension and Napa County Grape Growers Workshop (December 1, 2011).

- Napa County Watershed Information Center and Conservancy (March 22, 2012).
- Sonoma Farm Bureau (April 5 and June 7, 2012).
- Napa Valley Vintners *Green Issues Affecting Your Winery* meeting (August 23, 2012).

California Environmental Quality Act (CEQA)

52) The Water Board is the lead agency pursuant to California Environmental Quality Act (Public Resources Code section 21000 et seq.; CEQA).

53) On April 14, 2010, the Water Board conducted a CEQA scoping meeting at the Napa Main Library, City of Napa. Tentative Order Page 12 of 26

54) The Water Board filed a Notice of Intent to adopt a Mitigated Negative Declaration on November 16, 2012 at the State Clearinghouse and prepared a final Mitigated Negative Declaration prior to adoption of this Order.

Comment # 19. The Conditional Waiver program has significant environmental impact requiring an EIR i.e., a) The order allows a non governmental agencies to due significant monitoring, such as the RCD who does not make their data available to the public and their board is comprised of industry/polluters. Therefore, critical data that could inform the public of the waiver's ineffectiveness or compliance will cause significant environmental harm. b.) the CW does not adequately distinguish between on and off site erosion processes due to vineyard development such as channel incision which is a detrimental sediment source. c.) Lacks adequate coverage of vineyard thereby allowing major sediment sources to continue polluting